

**Conference on Effectively Restoring Ecosystems  
22-24 August 2000, St. Louis, Missouri**

**BACKGROUND**

**Session:** Plenary 3

**Topic:** Planning and Policy Updates

**Moderator:** Bill Klesch, CECW-PG

**Recorder:** Ellen Cummings

**Panelists:**

- Harry Kitch, Chief, Guidance Branch, Planning and Policy Division
- Lynn Martin, Institute for Water Resources
- Ellen Cummings, Mission Planning and Development Branch, Planning and Policy Division
- Steve Hudak, Chief, Eastern Branch, Programs Management Division

**Objective:** Provide an overview of current developments and trends in authority and guidance.

**Description:** Panelists presented brief discussions of ER 1105-2-100, ER 1165-2-501, Challenge 21 (section 212 of WRDA 99), WRDA 99 and 2000 overviews and an update regarding the Continuing Authorities Program.

**HIGHLIGHTS**

Harry Kitch led off with a review of ER 1105-2-100 which has been updated to incorporate changes in policy and law since 1990 and reorganized for clarity. The main ER is a summary which provides the basic principles in an accessible format that everyone, including sponsors may want to read. The details are found in the Appendices. The ER can be found at <http://www.usace.army.mil/inet/usace-docs/eng-regs/cecw.htm>. A version with additional internal links is in preparation.

Lynn Martin summarized the history of ecosystem restoration policy from 1990 through 2000, and the most recent policy guidance, ER 1165-2-501 and the accompanying EP 1105-2-502. She stressed that this policy applies to all aspects of Civil Works and not just to planning activities. Among the topics covered are authorities, environmental compliance, water quality, real estate, remediation, major rehabilitation, recreation, regulatory, and formulation/evaluation policy. The ER can be found at <http://www.usace.army.mil/inet/usace-docs/eng-regs/er1165-2-501/toc.htm>, and the EP can be found at <http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1165-2-502/toc.htm>.

Ellen Cummings summarized the major ecosystem related items in WRDA 99 and the proposed WRDA 2000. WRDA 99 contained approximately 75 ecosystem related items ranging from specific project authorizations to programmatic items. The text of WRDA 99 is at <http://www.usace.army.mil/inet/functions/cw/cecwa/branches/legislative/#wrda>. The various versions of WRDA 2000 may be found at the same web site. The implementation guidance for WRDA 99 is at <http://www.usace.army.mil/inet/functions/cw/cecwa/branches/development/specificguidance.htm>.

Cummings also provided a summary of the Flood Mitigation and Riverine Restoration authority and its implementation status. Authorized by section 212 of WRDA 99 this is the program known as Challenge 21. Draft guidance had been prepared in cooperation with OASA(CW) and comments were being reviewed. However the program has not yet been funded so no studies or project have been initiated.

Steve Hudak gave an informative review of the CAP program including performance for FYs 98, 99 and 00 to date. The tight funding situation and FY 01 expectations were also discussed, including a brief review of the overall 2001 potential appropriations. Given the ongoing and committed construction and the congressional adds, it is possible that additional reprogramming may be necessary in FY01. However, the entire CG funding situation is tight. (editor's note, if an appropriations bill is passed along the lines of the conference report more funds will be available for CAP in FY 01 then expected.) The CAP data is to be entered into PRISM and Wanda Cook will be managing the program in CECW-BE.

The session ended with a brief period of Qs and As. Many of the questions focused on funding issues, including the pros and cons of congressional adds, the conflict between the administration and congress on budget priorities, and the problems caused by the tight CAP funding situation.

## **HANDOUTS**

### **Administration's Coral Reef Initiative**

Coral reefs are some of the most valuable and spectacular places on earth. Covering less than 1% of the planet's surface, coral reefs and their associated mangrove and seagrass habitats are the world's most biologically diverse marine ecosystems. Coral reefs are valuable assets providing food, jobs, protection from storms and billions of dollars in revenues each year to local communities and national economies.

However, coral reefs are in crisis. Reef ecosystems are now being rapidly degraded and destroyed worldwide by a variety of human activities. The coral reef crisis threatens the survival of these valuable and ancient marine ecosystems, and the communities and economies that depend on them.

The U.S. Coral Reef Task Force (CRTF) was established by President Clinton in June 1998 through Executive Order #13089 on Coral Reef Protection to lead the U.S. response to this growing, global environmental crisis. Chaired by the Secretary of the Interior and the Secretary of Commerce, the CRTF is composed of the heads of 11 federal agencies [the Corps is represented by the Secretary of Defense via OASA(CW)] and the Governors of 7 states, territories or commonwealths with responsibilities for coral reefs. The CRTF is responsible for overseeing implementation of the Executive Order, and developing and implementing coordinated efforts to:

- map and monitor U.S. coral reefs;
- research the causes and solutions to coral reef degradation;

- reduce and mitigate coral reef degradation from pollution, over fishing and other causes, and
- implement strategies to promote conservation and sustainable use of coral reefs internationally.

To date the CRTF has produced three documents outlining their approach to responding to the President's charge in EO 13089 and they are; "National Action Plan for Coral Reef Conservation", "Oversight of Agency Actions Affecting Coral Reef Protection" and "Coral Reef Protected Areas: A Guide for Management". On 26 April 2000, the Deputy Commander for Civil Works, MG Hans Van Winkle forwarded an endorsement memorandum to his MSCs, subject: Memorandum for the field, "Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research and Sanctuaries Act, River and Harbors Act and Federal Project Authorities". Attached to this memo was joint Corps/EPA guidance, signed by Dr. Westphal and J. Charles Fox on 3 November 1999, detailing how we are to address coral reef resources in the conduct of our activities and programs.

A website for coral reef information exists, whose URL is "<http://coralreef.gov/>" For additional information contact Bill Klesch.

## **Essential Fish Habitat(EFH)**

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) set forth a new mandate for the National Marine Fisheries Service (NMFS), regional fishery management councils (FMC), and other Federal agencies to identify and protect important marine and anadromous fish habitat. The EFH provisions of the MSFCMA support one of the Nation's overall marine resource management goals - maintaining sustainable fisheries. Essential to achieving this goal is the maintenance of suitable marine fishery habitat quality and quantity. The FMCs, with assistance from NMFS, have been charged with delineating "essential fish habitat" (EFH) for federally managed species. As new FMPs are developed, EFH for newly managed species will be defined as well. Federal action agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with NMFS regarding the potential effects of their actions on EFH, and respond in writing to NMFS or FMC recommendations. However, measures recommended by NMFS or an FMC to protect EFH are advisory, not proscriptive.

On December 19, 1997, interim final rules were published in the Federal Register (Vol. 62, No. 244) which specify procedures for implementation of the EFH provisions of the MSFCMA. These rules address, in detail, the coordination, consultation, and recommendation requirements of the MSFCMA. Wherever possible, NMFS intends to use existing interagency coordination processes to fulfill EFH consultations for Federal agency actions that may adversely affect EFH. EFH consultations will be incorporated into interagency procedures established under the National Environmental Policy Act, Endangered Species Act, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes, provided certain specifications are met. These conditions are:

- (1) The existing process must provide NMFS with timely notification of the action;
- (2) Notification of the action must include an EFH Assessment of the impacts of the proposed action as outlined in the EFH rules; and,
- (3) NMFS must have completed a written finding that the existing process satisfies the requirements of the MSFCMA.

If existing processes cannot adequately address EFH consultation requirements, appropriate new procedures should be developed in cooperation with the NMFS. Programmatic consultations may be implemented or General Concurrences may be developed when program or project impacts are individually and cumulatively minimal in nature. A General Concurrence letter dated 15 July 1999 was received from NMFS headquarters noting that the individual permit public notice process used in the Corps regulatory process was sufficient to meet the consultative requirements of the MSFCMA. A similar General Concurrence has yet to be developed for federal projects as of this date. An effective, interagency EFH consultation process is vital to ensuring that Federal actions are consistent with the MSFCMA resource management goals.

A website for EFH information exists, whose URL is <http://www.nmfs.noaa.gov/>. For additional information contact Bill Klesch.

### **Status of ER 200-2-2**

As many of you are well aware, a draft of ER 200-2-2, PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT, has been over at the Council on Environmental Quality (CEQ) for their review for quite some time. Like so often happens, it seems that our ER 200-2-2 has been a victim of a string of uncontrollable events. During the middle of the review process, principle staff changes at CEQ, other priorities and the rising concerns over “categorical exclusions” in the NEPA process imposed even further delays on closure. Very recent exchanges with CEQ have resulted in 1) providing them with another set of ER 200-2-2 and associated Appendices and 2) a promise from CEQ that they consider this a priority review responsibility. There is reason for optimism that this long, and often painful, process is nearing a satisfactory conclusion. Optimism notwithstanding, until we finish the process, complete with both draft and final circulation in the Federal Register, our exiting ER 200-2-2, dated 4 March 1988, must be used as the NEPA Implementation Regulation. One result is that in accordance with that regulation, Records of Environmental Consideration still may not be used for Civil Works actions. For additional information please contact Forester Einarsen, CECW-PC.

### **Fish and Wildlife Coordination Act Transfer Fund Agreement**

In response to a formal recommendation from SWD as well as numerous informal comments from various field offices, HQ initiated a review of the agreement in July 1999. The US Fish and Wildlife conducted a similar review during September 1999 and a staff level coordination meeting with FWS was held in October. Since that time, HQ work on the agreement has been superceded by higher priority. For additional information please contact, Cheryl Smith, CECW-PG.